UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

AMERICAN FEDERATION FOR CHILDREN, INC.,

and **Case: 28-CS-246878**

SARAH RAYBON, an Individual.

MOTION TO DISMISS OR IN THE ALTERNATIVE
MOTION FOR SUMMARY JUDGEMENT

Pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board ("the Board"), American Federation for Children, Inc. ("AFC" or the "Respondent"), by and through its undersigned counsel, hereby files this Motion to Dismiss the Consolidated Complaint or in the Alternative Motion for Summary Judgement.

I. INTRODUCTION

The Consolidated Complaint alleges multiple violations of the National Labor Relations Act (the "Act"), none of which survive scrutiny. This matter ultimately stems from an undisputed fact. The Complainant, Sarah Raybon, a white woman, targeted minority AFC co-workers with bad faith allegations that her supervisor, Steve Smith, was racist. These efforts combined with vague statements that Smith was "rude" are not protected concerted activity as a matter of law. Notably, the targeted minority employees saw these allegations for what they were – i.e., a self-serving effort to smear Smith by attempting to manipulate minority workers. When the minority AFC employees complained to management that Raybon had discriminated against them, Raybon resigned before being rightfully disciplined.

Also alleged in the Consolidated Complaint, is that AFC violated the Act by retaliating against Raybon after her resignation by excluding her from some of its strategy meetings with third-parties. As a non-profit, AFC advocates for and implements school choice programs across

the country. Following her resignation, Raybon continued to work on school choice issues with another organization. The undisputed facts reveal that, when Raybon and AFC were working toward the ***same*** political or implemental goal, it gladly worked with her. However, when Raybon publicly worked ***contrary to*** AFC's political activities, AFC reasonably ***did not*** work with Raybon on that issue. Not only are these actions patently non-retaliatory, they are constitutionally protected pursuant to AFC's freedom not to associate.

Finally, while AFC maintains its employment handbook did not interfere with its employees' protected rights, it has amended its policies to more clearly evidence its commitment to respect those rights in strict accordance with the Board's prior decisions. The unaltered policies' legitimate business justifications are obvious. Therefore, these issues do not require a hearing on the merits and this Motion should be granted by dismissing all charges or otherwise finding judgement in AFC's favor.

II. STATEMENT OF THE CASE

Raybon's Work With AFC

AFC, through is state partners, designs programs to provide K-12 students with additional opportunities to attend the school of their families' choice using state-funded scholarships to enroll in participating nonpublic schools. These "school choice" programs are active across the United States. Relevant to the charges made in the Consolidated Complaint, at times, AFC will advocate for state legislators to support or oppose legislation relevant to its school choice goals.

The Complainant, Sarah Raybon, worked as AFC's Arizona Director of Implementation. In late 2018 AFC ended its two-year search for an Arizona State Director. Schilling Aff. ¶¶ 7-8. Raybon herself was considered for the position but was not chosen for fear of a potential conflict

of interest with her mother.[1] *Id.* Upon learning that AFC planned to hire former Arizona State Senator Steve Smith for the position, Raybon agreed with the selection. *Id.*

Soon after Smith began working for AFC in January of 2019, he was approached by Raybon's mother Sydney Hay ("Hay"). Smith 2019 Aff. ¶¶ 9-13.[2] Hay informed Smith that Raybon purportedly was unhappy with not receiving his position and resented Smith's efforts to lead the Arizona team. *Id*. Smith responded to this information by attempting to express his appreciation of Raybon's work and called her directly to address any miscommunication or resentment. *Id*. Sometime following this conversation, Smith and Hay had a disagreement about a conflicting report produced by Hay concerning Arizona Superintendent of Public Instruction, Kathy Hoffman ("Hoffman"). *Id*. at ¶¶ 16-17. Following that disagreement, Raybon text messaged Smith alleging he had been rude to Raybon's mother. *Id.*

As a result of his attempt to manage the actions of the AFC Arizona team and the tasks completed on its behalf by Hay, Raybon lobbed a complaint that Smith's supervision was purportedly "illegal" because she believed he was in violation of a lobbying ban for former elected officials.[3] Allision Aff. ¶¶ 3-6; Smith Aff. ¶¶ 16-17. An investigation and independent legal review resulted in a finding that Smith had not violated any laws or ethical concerns. Allision Aff. ¶6. Although her complaints were unfounded, Raybon did not face any adverse actions for having raised her baseless concerns.

---

[1] At that time, Raybon's mother, Sydney Hay, worked with the AFC Arizona team as an independent contractor. The Arizona State Director would, among other duties, be responsible for supervising the tasks contracted to and performed by Ms. Hay.

[2] Smith produced an affidavit in September 2019 in response to Raybon's original allegations. In July of 2020, a Board Agent questioned Smith and produced a second affidavit sworn to by Smith. Both affidavits are attached and referred to by the year in which they were sworn to.

[3] Smith served as a member of the Arizona House of Representatives from 2010 to 2015 and served as a member of the Arizona State Senate from 2015 to 2019.

February 2019 D.C. Meeting

Her prior efforts to undermine Smith being unavailing, Raybon openly began a campaign of baseless personal attacks against him. Notably, these efforts had ***nothing*** to do with Smith's conduct in the workplace or any other aspect of AFC's operations. Rather, in February 2019, AFC held a meeting in Washington D.C. with members of all of its state teams. During this event Raybon approached five minority AFC employees to discuss Smith. Smith 2019 Aff. ¶ 20; Schilling Aff. ¶ 13; Martinez Aff. ¶ 8. In each conversation, Raybon accused Smith of being "racist against Hispanics" because of legislation Smith had supported ***nearly a decade earlier*** while serving in the Arizona Legislature.[4] *Id.* Of note, Raybon did not allege any of Smith's actions while at AFC to be "racist."

Of those minority employees approached by Raybon, three complained to Kim Martinez, a Hispanic AFC employee. Martinez in turn reported the comments to AFC President John Schilling and others. Schilling Aff. ¶ 12; Martinez Aff. ¶ 10. Martinez reported that she and others took offense to what they believed was blatant manipulation of their race by Raybon. Martinez Aff. ¶¶ 9-10. I.e., the employees reasonably believed that the sole reason Raybon approached them with her salacious claim against Smith was their race or national origin. Martinez then informed AFC executives that she refused to work with Raybon ever again due to what Martinez believed to be racially discriminatory conduct by Raybon. *Id.*

[4] The legislation in question would have allowed a health care provider to ask a patient if they were in the U.S. lawfully if a patient who was being treated in a hospital did not provide any medical insurance, driver's license, physical address, social security number or any other identification. Regardless of the response, medical attention would be provided. The stated intent of the bill was to allow the costs associated with the care to be determined so the hospital's debt could be better understood. Smith 2019 Aff. ¶ 18.

Upon learning of the comments, AFC President Schilling personally investigated the allegation of racism by a State Director. Schilling Aff. ¶ 16. The two met with Raybon and asked her if she was having issues with Smith. *Id*. ¶ 15. She again accused Smith of being racist due to a bill Smith sponsored eight years prior and then diverted to talking about how Smith was purportedly rude and disrespectful to her. *Id* ¶ 16. Given Schilling was at the time not fully aware of the facts, he told Raybon that AFC did not tolerate hostile work environments for its employees, and they would investigate Smith further. *Id*. Raybon insisted that she wanted to handle it on her own and did not want anyone else to speak with Smith about her allegations. *Id*.

After further investigating the matter, Schilling concluded the accusations were baseless and defamatory. Schilling Aff. ¶ 19. AFC Chief Financial Officer Miller and Schilling then spoke again with Raybon on February 25, 2019. *Id*. In this meeting they informed Raybon of the conclusion that her allegation concerning racism was made in a bad faith attempt to smear Smith's name, especially since Raybon would have been aware of the sponsored legislation ***prior to*** voicing her initial support of his hiring into AFC. *Id*. As they discussed these issues with Raybon, she announced she was resigning. *Id*. Later that evening, she emailed Schilling a written resignation. *Id*. At no time during that meeting was Raybon told that AFC intended to terminate her employment.

Raybon's Post-Resignation Activities

Following Raybon's resignation, Smith saw a public social media post from Raybon supporting Arizona Superintendent of Public Instruction, Kathy Hoffman ("Hoffman"). Smith 2019 Aff. ¶ 24. AFC and Hoffman disagreed on a policy issue called Empowerment Scholarship Accounts ("ESAs"), which are an important component to AFC's policy and legislative goals in Arizona. *Id*. ¶¶ 24-25.

Smith and Hoffman personally clashed in July of 2019 as AFC criticized Hoffman's position on ESAs. *Id*. Upon seeing Raybon's tweet supporting Hoffman, Smith forwarded the tweet to Sally Henry ("Henry"), a personal friend of his who worked with an organization that worked with Raybon's then employer. *Id*. Smith was aware that Henry's organization and Raybon's employer both agreed with AFC and in turn, disagreed with and did not support Hoffman. *Id*. The purpose of Smith's email to Henry was only to advocate against Hoffman's position and did not concern Raybon personally.

In early 2020, the Arizona Senate was considering a bill regarding ESAs which AFC supported. Raybon and her mother Hay were opposed to the ESA bill in question. Ex. 1. As AFC advocated for specific Arizona Senators to vote for the bill, AFC received several notes from these Arizona Senators complaining of a backlash to the bill via social media. *Id*. Another policy organization "Goldwater" informed AFC that Raybon's social media posts were driving the backlash against the bill AFC was supporting. *Id*. AFC then worked for positive social media statements on the bill, which Raybon directly and negatively commented on stating, "the result is that ESA parents lose." *Id*; Smith 2020 Aff. p.3. With Raybon's previous social media posts supporting Hoffman and her recent explicit statements ***against*** AFC's social media campaign in support of the proposed bill, AFC concluded it was directly opposed to Raybon on this policy issue.

Shortly thereafter, AFC moved to schedule a weekly strategic meeting with coalition members regarding the ESA bill's movement to the Arizona House of Representatives and other related issues. Ex. 2. While AFC's agent Steve Smith did not mention any exclusions, he requested the communication stay with the recipients of the email and their organizations. *Id*. A member of Center of Arizona Policy responded that while the coalition was without unity at that time, Hay

should be included in the weekly meetings. *Id*. Due to the adverse position Raybon and Hay had on that issue, AFC declined to include them in future meetings on that topic. Smith ultimately excluded several individuals from participating on ESA strategy meetings for a variety of concerns. Smith 2020 Aff. p.4-6.

Belying any inference of animus, AFC ***did work*** with Raybon on other issues where their policy positions were aligned. For example, prior to the disagreement between Raybon and AFC over ESA legislation regarding the ESAs, in January 2020, AFC participated in planning calls for an Arizona School Fair. Ex. 3. These telephonic meetings included Raybon. Notably, AFC held no objection to Raybon's participation in these planning sessions. Again, in June of 2020, AFC's Smith contacted the Arizona Christian School Tuition Organization ("ACSTO") regarding a separate policy goal of AFC's. When ACSTO suggested Raybon could help, she and Smith worked amicably together without issue. Ex. 4.

Handbook Changes

In January 2021, AFC implemented changes to its employment handbook. Ex. 5. The relevant portions state:

> **CONFIDENTIALITY**
>
> Every employee is responsible for protecting any and all information that is used, acquired, or added to regarding matters that are confidential and proprietary of AFC including but not limited to client/donor lists, client/donor information, accounting records, work product, production processes, business operations, computer software, computer technology, marketing and project development operations, to name a few. Confidential information will also include information provided by a third party and governed by a non-disclosure agreement between AFC and the third party. Access to confidential information should be disclosed on a "need to know" basis and access must be authorized by management. Any departure from this policy shall be grounds for disciplinary and legal action. Employees will be asked to sign a confidentially agreement to protect the proprietary information, including but not limited to databases and any information of strategic value to the organization.

SOLICITATIONS AND DISTRIBUTION OF LITERATURE

It is the intent of AFC to maintain a proper business environment and to prevent interference with work and inconvenience to others from solicitations and/or distribution of literature.

Group meetings for solicitation purposes, distributing literature or circulating petitions during work hours is prohibited unless it is approved as an organization-sponsored event. The following guidelines will apply throughout the organization:

- Employees will not engage in any solicitation of other employees for any purpose whatsoever during working hours.
- Certain types of information may be posted on AFC's bulletin board. The President or CEO will approve and post all information that is displayed on the organization bulletin board.

OPEN DOOR POLICY

AFC strongly believes in an open-door, open-communication policy and feels it is an important benefit for all employees. This policy, we believe, will allow an employee to come forward and discuss problems with his or her supervisor to resolve issues quickly and efficiently. However, if an employee's supervisor is not able to satisfy the questions regarding the interpretation or application of this manual or any other workplace issue, then employees are free to contact the next higher level of supervision, President and/or CEO, or the Chief Financial Officer. If an employee has or foresees a problem that may interfere with that employee's ability to adequately perform his or her responsibilities, the employee should discuss the matter with the President or his or her designee.

EQUAL OPPORTUNITY EMPLOYER

Any employee who feels that a violation of this policy has occurred should bring the matter to the immediate attention of his or her supervisor. An employee who is uncomfortable for any reason in bringing such a matter to the attention of his or her supervisor shall report the matter to the President, Chief Executive Officer (CEO) or Chief Financial Officer (CFO). AFC will investigate all such allegations and prohibits any form of retaliation against any employee for making such a complaint in good faith. An employee who feels subjected to retaliation for bringing a complaint of harassment or participating in an investigation of harassment should bring such matter to the attention of his or supervisor, the President, CEO or CFO.

III. LEGAL STANDARDS

The Board will grant Motions for Summary Judgements when there are "no genuine issue as to any material fact," and "the moving party is entitled to judgment as a matter of law." *Security Walls, LLC*, 361 NLRB 348, 349 (2014) (quoting *Conoco Chemicals Co.*, 275 NLRB 39, 40 (1985)). While AFC concedes it strongly disputes many of the facts alleged in the Consolidated Complaint, even accepting the facts as alleged, AFC has not violated the Act.

A. The Alleged Handbook Violations Have Been Cured and/or Are Compliant With Previous NLRB Rulings.

The Consolidated Complaint alleges four of AFC's employee handbook policies are overly broad or discriminatory. AFC has amended two policies, its Confidentiality policy and Distribution of Literature policy (collectively the "Amended Policies") as reprinted above. The newly amended policies were written to conform with previous NLRB decisions.[5] *See Argos USA LLC d/b/a Argos Ready Mix, LLC*, 369 NLRB No. 26 (Feb. 5, 2020) (stating a confidentiality agreement limited specifically to a company's proprietary business information does not interfere with the exercise of Section 7 rights); *see also Medic Ambulance Serv., Inc. & United Emergency Med. Servs. Workers, Local 4911, AFSCME, AFL-CIO*, 370 NLRB No. 65 (Jan. 4, 2021) (stating, "[t]he Board has long recognized the principle that '[w]orking time is for work,' and thus has permitted employers to adopt and enforce rules prohibiting solicitation during 'working time,' absent evidence that the rule was adopted for a discriminatory purpose.") Given none of the allegations in the Consolidated Complaint have even a remote connection to either of the Amended Policies, any allegation these policies were flawed are moot. The remaining unchanged policies, AFC Equal

[5] While AFC does not concede its previous policies were in violation of the Act, it has amended the policies to more closely conform to previous Board decisions on these issues to avoid any confusion.

Opportunity Employer statement and its "Open Door" policy (collectively the "Disputed Policies") are not only lawful policies supported by business justifications, but they are also directly for the benefit of AFC's employees.

To succeed on a claim that an employer's handbook infringes on the exercise of rights protected by Section 7 of the Act, the employer's handbook, when reasonably interpreted, must have an adverse impact on employees' rights and that this adverse impact outweighs the justifications associated with the rule. *The Boeing Co.*, 365 NLRB No. 154 (Dec. 14, 2017); *Strongsteel of Alabama, LLC & Tony Mcginty & Eric Bracewell*, 367 NLRB No. 90 (Feb. 13, 2019).

As reprinted above, the two policies in question here direct an employee that is subject to some form of discrimination or an employee with another workplace concern to contact ***someone*** at AFC with authority so that any unlawful or harmful behavior could be addressed.[6] Notably, both policies give multiple options for the suggested communication at the discretion of the employee. Neither policy states the employee is prohibited from discussing the issue with anyone else. The justifications associated with the Disputed Policies are plain. In order to address the needs or complaints of its employees AFC needs to know of them. The Consolidated Complaint defies explanation by suggesting policies that explicitly state the organization wants to prevent unlawful activity can somehow be read to endorse such behavior.

This policy goal is endorsed by the NLRB which has previously ruled that policies forbidding "illegal discrimination or harassment" from "go[ing] unreported" cannot reasonably be read to encompass Section 7 activity. *TU Electric*, 27 NLRB AMR 37029 (1999). Therefore, the

[6] The "Open Door" policy also references that an employee is free to ask any questions concerning the policies themselves.

policy in question which states an employee "should" report possible discrimination to their supervisor or another authority cannot reasonably be read to have an adverse impact on employees' NLRA rights, especially when considered with the plain benefit of such a rule.

Given the Amended Policies have addressed any possible issue with the previous versions of these policies and those policies are not alleged to have resulted in any specific violation, those alleged violations should be dismissed as moot. The remaining Disputed Policies are lawful attempts to know of discrimination or harassment and are permitted policies as a matter of law. AFC submits the allegations regarding its handbook policies be dismissed.

B. Raybon's Baseless Personal Attacks Are Not Protected Concerted Activity

The Consolidated Complaint takes great pains to characterize Raybon's comments about her supervisor, Smith, in February of 2019 without acknowledging the undisputed fact of what the comments were and who they were made to. Cons. Compl. ¶¶ 4(a), 4(g), 4(i). As described in detail above, Raybon claimed Smith was "racist against Hispanics" because of a political action almost a decade prior to his time at AFC. These comments were only directed to minority AFC employees who took great offense to Raybon's actions. These comments are not concerted activity as a matter of law and therefore Raybon could not have been retaliated against for engaging in concerted activity.

To establish that an employer's actions constitute retaliation in violation of § 8(a)(1) of the Act, the charging party must show "under all of the circumstances, the employer's conduct may reasonably tend to coerce or intimidate employees" from engaging in activity protected by Section 7 of the Act. *N.L.R.B. v. Air Contact Transp. Inc.*, 403 F.3d 206, 212 (4th Cir. 2005) (quoting *NLRB v. Grand Canyon Mining Co.,* 116 F.3d 1039, 1044 (4th Cir.1997); *see also Flagstaff Med. Ctr., Inc. v. NLRB*, 715 F.3d 928, 930-31 (D.C. Cir. 2013); *Brandeis Mach. &*

Supply Co. v. NLRB, 412 F.3d 822, 830 (7th Cir. 2005). This burden must be met by a preponderance of the direct and/or circumstantial evidence that the employee's union or other protected activity was a substantial or motivating factor for the adverse employment action - i.e., that a causal relationship existed between the employee's union or protected activity and the employer's adverse action against the employee. *Wright Line*, 251 NLRB 1083, 1089 (1980), *enf'd*. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

There can be no connection from protected activity and an adverse action here because there was neither protected activity nor even an adverse action. AFC agrees that, "concerted activity directed toward ending alleged discriminatory employment practices" deserves "protection under Section 7." *Frank Briscoe, Inc. v. N.L.R.B.*, 637 F.2d 946, 950 (3d Cir. 1981). However, here Raybon did not seek to end any particular ***employment practice***. Instead, she only claimed Smith was "racist against Hispanics" because of ***political action*** almost a decade prior to his time at AFC.[7]

The Consolidated Complaint describes these actions as Raybon, "expressing concerns to other employees about her supervisor having a discriminatory viewpoint." Cons. Compl. ¶4(i). Assuming true for the purpose of the relevant standard, by definition "viewpoints" are neither actions nor practices. Therefore, Raybon's comments could not have been directed at ending any particular action by Smith. Instead, these claims were made purely out of personal resentment Raybon had with Smith. An employee's accusation against his or her employer of racism out of "personal sentiments" without "any underlying facts justifying" the accusation, is not protected by Section 7. *Media Gen. Operations, Inc. v. N.L.R.B.*, 394 F.3d 207, 212 (4th Cir. 2005). The

[7] Assuming *arguendo* Raybon's vague complaints to others that Smith was rude to her is considered protected activity, as shown above, these comments never concerned or even upset AFC executives or Smith who only focused on Raybon's bad faith claims of racism.

Consolidated Complaint points to no fact justifying the accusation of racism and none can be claimed. Raybon's actions are therefore not concerted activity as a matter of law so the reaction[8] to those actions by AFC could not have been in retaliation.

Further, Section 8 of the Act prohibits retaliation for employee actions done "for ***mutual aid or protection***." *See Halstead Metal Prod., a Div. of Halstead Indus., Inc. v. N.L.R.B.*, 940 F.2d 66, 69 (4th Cir. 1991) *citing Joanna Cotton Mills Co. v. NLRB,* 176 F.2d 749, 752-53 (4th Cir.1949). Raybon's baseless racist complaint regarding past legislation cannot be twisted as an effort to protect others, neither can the claim Smith was rude to her and her mother, an independent contractor. The Consolidated Complaint alleges no action by Smith that Raybon was particularly seeking to end for others' protection, a fundamental element of protected action.

The Consolidated Complaint also includes a series of allegations regarding AFC's interactions with Raybon post-resignation.[9] Cons. Compl. ¶¶4(k), 4(l), 4(m). Without reference to any factual claims, the Consolidated Complaint supposes AFC's interactions with Raybon were motivated by a retaliatory animus, rather than the obvious pursuit of AFC's advocacy mission. As described above, following her resignation, AFC, through Smith, worked with Raybon multiple times without complaint or incident. Ex. 3, 4. Other times AFC chose not to work with Raybon

[8] The "reaction" itself is disputed. While Raybon submitted a written resignation, the Consolidated Complaint states without basis she was terminated. However, this issue need not be addressed to dismiss the related charges under the standard for this Motion.

[9] Again, the Consolidated Complaint baselessly contests the fact Raybon resigned despite indisputable evidence. But such resignation limits her rights with respect to post-resignation treatment. *See Model A & Model T Motor Car Reproduction Corp*., 259 N.L.R.B. 555 (1981) cited by *Halstead Metal Prod., a Div. of Halstead Indus., Inc. v. N.L.R.B.*, 940 F.2d 66, 70 (4th Cir. 1991) (stating, "Because [employee] actually resigned, he was not protected by the Act from future discrimination, even if the discrimination arose from participation in concerted activities with employees who were protected by the Act.") Of course, as explained in detail herein, none of AFC's conduct was motivated by retaliatory animus and her claims fail regardless of the circumstances of her separation from Respondent.

and other individuals where those persons were advocating positions contrary to those advocated by AFC. This benign and explicable behavior cannot be spun into a finding of retaliatory animus. Rather, the decision to at times exclude Raybon and others from AFC's activities on a particular policy was made for the legitimate and protected goals of AFC.

Regardless of her previous NLRB activity, AFC is under no obligation to include Raybon in strategy sessions ***supporting*** a bill she was then working actively ***to defeat.*** Holding otherwise would violate AFC's free speech rights. The First Amendment of the Constitution "plainly presupposes a freedom not to associate." *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 623, 104 S. Ct. 3244, 3252, 82 L. Ed. 2d 462 (1984). When inclusion of an unwanted party burdens an organizations expressive activity, the organization holds a right "not to associate." *See Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648, 120 S. Ct. 2446, 2451, 147 L. Ed. 2d 554 (2000). Here, imposing the burden of including individuals actively working to defeat a bill of law on a strategy session to support that law, is *per se* a violation of AFC's right not to associate.

AFC's right to exclude Raybon from its strategy sessions is further highlighted by the fact that, had Raybon been AFC's ***employee*** at the time she was engaging in adversarial social media activity, AFC would have been more than justified in terminating her for insubordination. This is true even if her prior accusations of racism were protected activity. *See, e.g., Mv Transportation, Inc. & Lanita Burgos, an Individual*, 2018 WL 2392900 (May 24, 2018) (dismissing complaint because even though the employee in question "engaged in protected activity, the record evidence establishe[d] that the Respondent would have discharged her for insubordination, irrespective of her protected activity.") (citing *America's Best Quality Coatings Corp.*, 313 NLRB 470, 486-487 (1993); *Medial Gen'l Operations v. N.L.R.B.*, 394 F.3d 207, 212 (4th Cir. 2005) ("Nor does the Act shield against the consequences of insubordinate behavior if the disciplinary act was not

motivated by anti-union animus."). Clearly, the NLRA cannot be reasonably construed in a manner to give greater rights to third parties than to employees.

As shown, logically, AFC's actions could not have been in retaliation. In addition, AFC's decisions for whom to involve in specific policy advocacy efforts are constitutionally protected actions. The alleged violations in the Consolidated Complaint are both factually unsupported and legally at odds with AFC's constitutional rights, and the allegations must be dismissed.

IV. CONCLUSION

For all of the above reasons, AFC respectfully submits that the Consolidated Complaint should be dismissed as a matter of law consideration or judgment is ordered in favor of AFC.

[*Signatures on following page.*]

Dated: February 1, 2021

Respectfully submitted,

/s/

David R. Warner, Esq.
Tyler J. Freiberger, Esq.
CENTRE LAW & CONSULTING, LLC
8330 Boone Blvd., Suite 300
Vienna, Virginia 22182
Tel: 703-288-2800
Fax: 703-288-4868
dwarner@centrelawgroup.com
tfreiberger@centrelawgroup.com

Counsel for Respondent AFC

CERTIFICATE OF SERVICE

I certify that on the 2nd day of February 2021, a copy of the foregoing Motion to Dismiss or in the Alternative Motion for Summary Judgment was filed through the Agency's web portal with service to the parties as follows:

Via First Class Mail to:

Sarah Raybon
24038 North 40th Drive
Glendale, AZ 85310
Complainant

Lisa J. Dunn
Attorney
NLRB Region 28, Phoenix
2600 N Central Ave., Suite 1400
Phoenix, AZ 85004
Counsel for the Agency
A courtesy copy of this Motion was provided via electronic mail to Lisa.Dunn@nlrb.gov

/s/
Tyler J. Freiberger